

FOR ARGUMENT

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Supreme Court of the United States

OCTOBER TERM, 1976

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SUPREME COURT, U.S.

No. A-421

PEGGY J. CONNOR, *et al.*,
v. *Appellants,*

CLIFF FINCH, Governor of Mississippi, *et al.*

On Appeal from the United States District Court
for the Southern District of Mississippi

APPLICATION TO VACATE STAY ENTERED BY
DISTRICT COURT PENDING APPEAL AND FOR
AN INJUNCTION PENDING APPEAL, OR
ALTERNATIVELY SUPPLEMENTAL
PETITION FOR A WRIT OF MANDAMUS.

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PETITION FOR A WRIT OF MANDAMUS.

TO THE HONORABLE LEWIS F. POWELL, JR.,
Associate Justice of the Supreme Court of the United
States and Circuit Justice for the Fifth Circuit:

Appellants, plaintiffs below, by their attorneys respectfully move the Court pursuant to the All Writs Act, 28 U.S.C. § 1651, and Rules 18 and 51, U.S. Sup. Ct. Rules, for an order:

1. Vacating the stay order entered in paragraph 7 of the Final Judgment of the District Court entered November 18, 1976, staying special legislative elections in new House Districts 79 and 97 pending appeal;

2. Enjoining defendants-appellees to order and direct special elections for the Mississippi House of Representatives in new House districts 3, 8, 10, 16, 17, 22, 24, 25, 26, 27, 32, 33, 34, 37, 38, 44, 47, 52, 56, 79, 81, 88, 89, and 97 as established by the Final Judgment of the District Court entered November 18, 1976, to be held at the earliest practicable date, but not less than 30 days after the date of this Court's order; and

3. Enjoining defendants-appellees, pending the holding of these special legislative elections, temporarily to postpone the convening of the 1977 regular session of the Mississippi Legislature until these special elections are held, together with any necessary run-off elections, and the winning candidates are duly certified; or alternatively

4. Expediting this appeal on the merits.

As grounds for their application, plaintiffs-appellants would show to the Court as follows:

SUMMARY

This action was last before this Court this spring on plaintiffs' petition for a writ of mandamus to vacate the District Court's January 29, 1976, stay order, *Connor v. Coleman*, No. 74-1184 (decided May 19, 1976), the fourth proceeding in this Court in five years. Plaintiffs' motion for leave to file the petition was granted, and although the Court continued consideration of the petition, the Court instructed the District Court

"to 'bring this case to trial forthwith . . . ' and schedule a hearing to be held within 30 days on all proposed permanent reapportionment plans to

the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date thereafter." *Connor v. Coleman*, *supra* (slip op., p. 5).

The required hearing was held on June 15, 1975, and all prior hearings, exhibits, and pleadings were made part of the record. Yet, the new plan (the 1976 Plan), devised entirely by the District Court itself, was not promulgated until August 24 (Senate Plan) and September 8 (House plan). Both plans were finalized November 12 (ruling on objections). Final judgment was entered on November 18. The 1976 Plan provides a permanent legislative reapportionment plan for the first time, based on single-member districts statewide for both House and Senate.

All prior court-ordered reapportionment plans in this case, which, by employing multi-member districts and at-large voting, consistently have failed to conform to this Court's rulings in *Connor v. Williams*, 404 U.S. 549 (1972), and *Connor v. Waller*, 421 U.S. 656 (1975), that single-member districts are to be preferred. The 1971 and 1975 legislative elections had proceeded on the basis of court-ordered plans employing multi-member districts and countywide voting which denied black voters the opportunity of effective participation in the political process. The temporary plan ordered into effect by the District Court for the 1975 legislative elections also was based on the 1975 plan enacted by the Mississippi Legislature to which the Attorney General had objected under Section 5 of the Voting Rights Act of 1965 as racially discriminatory.

The 1976 Plan is based on single-member districts state-wide for the first time; it thus conforms to this Court's requirements for court-ordered plans. Yet, the District Court has nonetheless failed to effectuate the relief possible under the 1976 Plan by refusing to grant the special elections needed to correct the discrimination of black voting strength perpetuated in the 1971 and 1975 legislative elections, conducted under discriminatory reapportionment plans. The District Court's Final Judgment of November 18, 1976, determined that special elections were necessary in only two of the 122 new single-member House Districts. Yet, special elections are required in another 20 House Districts to overcome the discrimination of past court-ordered plans.*

Contrary to the specific directions of this Court in *Connor v. Coleman*, *supra*, that any special elections necessary be ordered "to coincide with the 1976 November Presidential and congressional elections, or in any event at the earliest practicable date thereafter," the lower court has refused to order any special elections at all prior to the convening of the 1977 regular session of the Mississippi Legislature, instead preferring to stay special elections it felt necessary until the outcome of the instant appeal.

The result is to perpetuate an improperly constituted state legislature and to deny black voters who resided in discriminatory multi-member and countywide districts under the 1971 and 1975 reapportionment plans, the opportunity to participate effectively in the electoral processes for another four years, until 1979. Eleven years of litigation have not yet resulted in a constitutionally apportioned Mississippi Legislature. The voters of Mississippi have suffered for ten years under court-ordered legislative reapportionment plans which failed to meet

* Further special elections are sought in two additional House Districts to avoid increasing the size of the House.

this Court's requirements for court-ordered plans and which in the face of an extensive past history of official discrimination affecting the right to vote in Mississippi, excluded black citizens from the opportunity to elect legislators of their choice. The permanent plan now ordered into effect by the District Court meets these requirements. The new plan provides 22 new majority black single-member districts which replace the old discriminatory multi-member districts of prior plans. Plaintiffs have accepted these new districts as adequate relief from the prior discriminatory districts. But now that this past dilution of black voting strength has been alleviated, special elections in these districts should be ordered without further delay. Justice has been denied by delay for the past ten years of litigation in this case, and the injustice and inequities of past discrimination will be perpetuated unless this Court acts now to order the special elections requested. Plaintiffs call upon this Court to intervene once again to secure plaintiffs' constitutional and legal rights, to grant plaintiffs full and effective relief to cure the discrimination of the District Court's prior multi-member district plans, and to effectuate its own order to the District Court to order "any necessary special elections" and to schedule those elections to be held "at the earliest practicable date."

STATEMENT AND PROCEEDINGS BELOW

1. On November 18, 1976, the District Court entered its Final Judgment ordering single-member legislative districts statewide for the Mississippi House of Representatives and Senate for the 1979 legislative elections. A copy of the Final Judgment is attached hereto as Appendix A. This is an appeal from paragraphs 7 and 8 of the Final Judgment denying interim special legislative elections for all but two House districts established by the 1979 permanent plan (new House dis-

tricts 79 and 97) and deferring setting a date for the special elections in those two House districts until the time for taking an appeal had run, or if an appeal is taken, until this Court has decided the appeal on the merits (Appendix A attached, p. 20). The 1977 regular session of the Mississippi Legislature is scheduled to convene on January 4, 1977. Miss. Code Ann. § 5-1-7 (1972). Plaintiffs' notice of appeal was filed on November 18, 1976, and is attached as Appendix B.

2. This action was filed October 19, 1965, by eight black registered voters, who represent the class of all black citizens and registered voters of Mississippi, and the Mississippi Freedom Democratic Party seeking relief from racially discriminatory and malapportioned state legislative districts. Defendants are the Governor of Mississippi, the members of the Mississippi State Board of Elections, and the presiding officers of the Mississippi Senate and House of Representatives. On June 11, 1976, the District Court granted the motion of the United States to intervene as plaintiff-intervenor. State legislative reapportionment plans enacted by the Mississippi Legislature in 1962, 1966, and 1971 were struck down by the District Court for malapportionment, and the 1975 plan enacted by the Mississippi Legislature was objected to by the Attorney General under Section 5 of the Voting Rights Act of 1965, see *Connor v. Coleman*, No. 75-1184, decided May 19, 1976 (slip op. at 1-3). Mississippi legislative elections in 1967, 1971, and 1975 all were held pursuant to apportionment plans ordered by the District Court, and each court-ordered plan employed numerous multi-member districts and excessive deviations from population equality. See Petition for Writ of Mandamus, *Connor v. Coleman*, *supra*, pp. 5-12.¹ On May

¹ Prior decisions in this case are reported at 256 F. Supp. 962 (S.D. Miss. 1966) (1962 legislative plan unconstitutional); 265 F. Supp. 492 (S.D. Miss. 1967) (1967 court-ordered plan); 330 F. Supp. 506 (S.D. Miss. 1971) (1971 court-ordered plan), on interim relief, 402 U.S. 690 (1971), 402 U.S. 928 (1971), vacated

19, 1975, holding that the District Court erred in approving the 1975 legislatively enacted plan without Section 5 preclearance, *Connor v. Waller*, 421 U.S. 656 (1975), this Court directed:

"This reversal is, however, without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan v. Howell*, 410 U.S. 315 (1973), *Connor v. Johnson*, 404 U.S. 549 (1972) and *Chapman v. Meier*, 420 U.S. 1 (1975)."

3. On remand and after the Attorney General objected under Section 5 of the Voting Rights Act to the 1975 reapportionment plan of the Mississippi Legislature, the District Court on July 11, 1975, ordered into effect "certain temporary districts for the election of Senators and Representatives in the Mississippi Legislature for the Year 1975 only," Pet., *Connor v. Coleman*, *supra*, App. F, p. 26a. The 1975 temporary court-ordered plan was identical to the 1971 court-ordered plan and to the plan to which the Attorney General objected under Section 5, except that new single-member districts were established for Hinds, Madison, Marshall, Jackson, Perry, Greene, George, Stone, Pearl River and Harrison Counties in the House, and Hinds County in the Senate, Pt., *Connor v. Coleman*, *supra*, App. F. Despite these alterations, the 1975 temporary plan failed to meet the requirements of this Court's mandate in *Connor v. Waller*. For the House, 51 of the 85 districts established by the 1975 court plan were multi-member districts (including floterial districts), electing 72.95 percent of the House mem-

and remanded on the merits, 404 U.S. 549 (1972); 396 F. Supp. 1308 (S.D. Miss. 1975) (approving 1975 legislative plan), rev'd, 421 U.S. 656 (1975); *Connor v. Coleman*, — U.S. —, 48 L.Ed.2d 295 (No. 75-1184, decided May 19, 1976) (granting motion for leave to file petition for mandamus).

bership (89 out of 122 Representatives). For the Senate, 15 of the 39 districts were multi-member districts, electing 53.85 percent of the Senate membership (28 out of 52 Senators). The District Court itself recognized that many of these districts combined majority black counties with majority white counties in districtwide white majorities, *id.*, pp. 33a-45a, and countywide voting submerged black population concentrations sufficiently large for independent representation. *Id.*, App. E, pp. 8a-15a. Further, the 1975 court plan districts were excessively malapportioned, with total deviations of 62.963 percent in the House and 20.292 percent in the Senate for floterial districts, and 19.729 percent in the House and 18.903 percent in the Senate for nonfloterial districts. *Id.*, App. E, pp. 15a-17a.

4. In justification for its failure to comply with this Court's mandate, the District Court stated that time was too short to formulate a permanent plan prior to the August, 1975, primaries and November, 1975, general election. Order of July 25, 1975, Pet., *Connor v. Coleman*, *supra*, App. G, p. 85a. However, in three separate orders the District Court held that no irreparable injury would result because when the permanent plan was formulated, special elections would be ordered. Order of July 25, 1975, *supra*; Order of July 8, 1975, Pet., *Connor v. Coleman*, *supra*, App. G, p. 86a; Order of August 1, 1975, Pet., *Connor v. Coleman*, *supra*, App. C, pp. 4a-5a. In its Order of July 8, 1975, the District Court said:

"We have determined that no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law. If the permanent plan, later to be adopted manifests that the temporary plan has caused such an injury the same shall be corrected by special elections as provided by Mississippi law."

Order of July 8, 1975, p. 15 (quoted in Appendix D attached, p. 32).

In its Order of August 1, 1975, the District Court indicated its "firm determination" to have a permanent plan approved by February 1, 1976, and said:

"As to all instances in which a special election may be required, the Court expects to direct that the same shall be held in conjunction with the 1976 Presidential elections so far as to save the expense of special elections as far as possible." Pet., *Connor v. Coleman*, *supra*, App. C, p. 5a.

5. After continually reiterating its assurances that a permanent plan would be approved by February 1, 1976, and special legislative elections ordered in conjunction with the 1976 presidential election, the District Court on January 29, 1976, entered an order staying all further proceedings in this case pending the outcome of three cases pending in this Court which were not relevant to the issues pending in the District Court. Pet., *Connor v. Coleman*, *supra*, App. A. Plaintiffs then filed a motion for leave to file and petition for writ of mandamus in this Court asking this Court to vacate the stay issued by the District Court and to order the District Court to proceed in its original schedule. On May 19, 1976, this Court granted the motion for leave to file, and continuing consideration on the petition itself, expressed the view that the District Court should proceed:

"Rather, in our view the District Court should in the circumstances promptly carry out the assurance given in its order of January 29, 1976, to "bring this case to trial forthwith . . ." and schedule a hearing to be held within 30 days on all proposed permanent reapportionment plans to the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and

also ordering any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date. * * * Connor v. Coleman, *supra* (slip op. 4-5) (emphasis added).

6. The required hearing was held on June 15, 1976, and on August 24, 1976, and September 8, 1976, the District Court issued opinions promulgating permanent legislative reapportionment plans for the Senate and House. Copies of these opinions are attached as Appendices D and E. In these opinions the District Court directed the parties to file proposals for special legislative elections, and stated:

"Upon receipt of this information, the Court will rule thereon as quickly as reasonably possible. Should special elections be ordered in any district, the same will be held only after fully adequate notice and in time for the person elected to take his seat when the Legislature is convened in regular session in January, 1977." (Opinion of Sept. 8, 1976, Appendix D attached, p. 33) (emphasis added).

Plaintiffs filed motions on September 8 and September 16 for special elections in the Senate, requesting special elections in 10 new Senate districts, and for special elections in the House, requesting special elections in 41 new House districts. A copy of the motion for House elections is attached as Appendix F. The Department of Justice filed similar proposals on September 11 and 26, requesting special elections in 14 new Senate districts and 29 new House districts. A copy of the Justice Department proposal for House elections is attached as Appendix G. Defendants proposed that no special election relief should be granted. Plaintiffs and plaintiff-intervenor also objected to the court's Senate plan and proposed alternative plans and objected to certain districts established in the court's House plan and pro-

posed alternative House districts to those objected to. The District Court held informal conferences with the parties on October 1 and 7 to attempt to resolve the objections to its plans. On November 12 the District Court entered its final opinion declining to alter its Senate plan and changing 11 districts of its House plan. A copy is attached as Appendix C. The date for special elections in the two House districts designated for special elections was stayed pending expiration of the time for an appeal or pending final decision by this Court of an appeal. App. C attached, p. 14. Final Judgment in accordance with the November 12 opinion was entered on November 18, and is attached hereto as Appendix A.

ARGUMENT

7. The final judgment of the District Court requiring special elections in only two new House districts and staying the holding of these special elections pending the outcome of an appeal (a) on the extent of the relief ordered, flies in the face of the holding of the District Court itself that the inequities of the 1975 temporary plan will be corrected by special elections under the permanent plan (par. 4, *supra*), and (b) on timing, amounts to substantial noncompliance with this Court's directions of May 19 in *Connor v. Coleman* that "any necessary special elections" be held "to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date." For the past 10 years—1967, 1971, and 1975—Mississippi state legislative elections have been held under court-ordered plans which through multi-member districts and countywide voting discriminated against the black voters of Mississippi and deprived them of the opportunity to elect legislators of their choice. In a state which is 37 percent black (1970 Census), no black Senators have been elected to the 52-member Mississippi Senate. The first black representative was elected to the 122-member House in 1967, and served as the only black representative until

three additional black representatives were elected from the Hinds County single-member districts in 1975. The election of these three black representatives from Hinds County in 1975 shows beyond doubt that the multi-member districts and countywide voting requirement mandated by the District Court in its prior court-ordered plans effectively diluted black voting strength and prevented the election of black legislators.

8. Although the District Court ordered special elections in two House districts, the relief ordered does not go far enough to correct the "irreparable injury" of dilution of black voting strength present in the temporary 1975 plan. In the 1975 plan (and also the 1971 plan), black voters were denied opportunities to elect legislators of their choice in multi-member districts which combined black majority counties with white majority counties to create districtwide white voting majorities (see Districts 3, 10, 32, 33, 34, 37, 38, 52, 47, 56, 81, and 97, *infra*) and by countywide voting in counties with white voting majorities which submerged the voting strength of large concentrations of black voters (see Districts 8, 16, 17, 22, 24, 25, 26, 27, 79, and 89, *infra*).

9. The reasons given by the District Court for failing to order more special elections under its new single-member plan are totally inadequate and demonstrate once again the refusal of the District Court to come to grips with the facts of this case and the requirements of the law. First, the District Court applied the constitutional standard of *White v. Regester*, 412 U.S. 755 (1973), and said that the plaintiffs have failed to show that black voters in Mississippi have been denied equal access to the political process (App. C, pp. 4-7). This finding totally ignores Mississippi history and is contrary to the evidence of this case. See *J. S. Connor v. Waller*, *supra*, pp. 14-19. The fact that blacks freely voted in the 1976 presidential election and may have

made the difference in the Mississippi vote (App. C, p. 7) is totally irrelevant to the discriminatory impact of at-large voting and multi-member districts in state legislative elections.

Second, the District Court applied the wrong standard in defining the irreparable injury caused by the 1975 temporary plan in terms of the constitutional standard. The District Court ignored the fact that the plan implemented by the court in 1975 was the same plan, with minor exceptions outlined above, to which the Attorney General objected under Section 5 of the Voting Rights Act for racial discrimination. See *Pet., Connor v. Coleman*, *supra*, p. 6, n. 1. The District Court also ignored that the 1975 temporary plan totally failed to comply with the mandate of this Court when it failed to meet the equitable requirements of *Mahan v. Howell*, *supra*, *Connor v. Williams*, *supra*, and *Chapman v. Meier*, *supra*, for court-ordered reapportionment plans when 72.95 percent of the House and 53.85 percent of the Senate were elected from multi-member districts in a plan malapportioned by deviations on the court's own figures of 20 percent in the House and 19 percent in the Senate (excluding floater districts).

Third, the District Court adopted two overly restrictive and largely irrelevant standards in singling out new districts in which special elections should be ordered. The District Court held that no special elections should be ordered in new black majority districts which were carved out of old multi-member districts which were majority black in population (App. C attached, p. 12). This criterion ignores the "practical weaknesses," *Chapman v. Meier*, 420 U.S. 1, 15 (1975), which inhere in all multi-member districts: with multiple candidates voters have difficulty making intelligent choices, ballots are lengthy, unwieldy, and confusing, voters feel deprived of a representative directly responsible to them, and single-mem-

ber districts are disadvantaged. This criterion also overlooks the standard developed in Supreme Court and Fifth Circuit decisions, by which the District Court is bound, that the measure of dilution is not population, but voting strength and denial of access to the political process. See *White v. Regester, supra*;² *Zimmer v. McKeithen*, 485 F.2d 1297, 1302-03 (5th Cir. 1973) (en banc), aff'd on other grounds sub nom. *East Carroll Parish School Bd. v. Marshall*, — U.S. —, 47 L.Ed.2d 296 (1976). Several of the old multi-member districts may have been majority black in total population, but were majority white in voting age population and voting strength (see Districts 8, 16, 17, 22, 24, 25, 26, 32, 33, 34, 37, 38, 47 and 56, *infra*). Further, the District Court did not even consistently apply its own standard. Old Districts 9 (Panola and Yalobusha), 23 (Lowndes, Noxubee, and Oktibbeha), 30 (Claiborne and Warren), and 33 (Adams) were majority white in total population (1970 Census) under the 1975 plan, but the District Court failed to order special elections in all the new majority black districts created out of those old, multi-member districts (see Districts 10, 52, 81, and 89, *infra*).

Next, as to those new districts which the District Court indicated met its standard, new Districts 3, 52, 79, 81, and 97 (App. C attached, pp. 8-12), the District Court ordered special elections in only two of them for the reason (new Districts 52 and 81) that, although the record in this case does not reveal it, no incumbent representatives currently reside in those districts, and thus special elections in additional districts would be required

² In *White v. Regester, supra*, this Court affirmed a District Court judgment which held that although Mexican-Americans constituted about half the population of Bexar County, Texas (*Graves v. Barnes*, 343 F. Supp. 704, 730 (W.D. Tex. 1972)), the at-large, multi-member districts nevertheless unconstitutionally excluded Mexican-Americans from effective participation in the political processes (412 U.S. at 767-70).

to avoid increasing the size of the House. In any event, this justification fails to outweigh the need for immediate relief to overcome the discrimination and dilution of black voting strength present in the 1975 plan. But here we demonstrate that because two incumbent representatives reside in new District 10, a minimum two additional special elections (in new Districts 44 and 88) are all that would be necessary to grant plaintiffs the relief they request. Even if those two offsetting special elections were not ordered, a temporary increase in the House membership by two would not unduly disrupt the operations of state government or "dilute the legislative voting strength of the presently sitting four black members of the House of Representatives" (App. C attached, p. 14).

10. Given that the 1975 temporary plan failed to comply with this Court's mandate in *Connor v. Waller, supra*, was based on a legislative plan to which the Attorney General had objected under Section 5 of the Voting Rights Act, and diluted black voting strength through multi-member districts and at-large voting, special elections are required. *Town of Sorrento v. Reine*, No. 75-93, decided April 26, 1976; *Hadnott v. Amos*, 394 U.S. 358 (1969).³ Special legislative elections should be ordered in the following new single-member districts:

District 3 (Marshall County, Beats 1, 2, 3, and 4).

Black voting strength in Marshall County was cancelled out in the 1971 court-ordered plan in old multi-member

³ See also, *Toney v. White*, 488 F.2d 310 (5th Cir. 1973) (en banc); *Keller v. Gilliam*, 454 F.2d 55 (5th Cir. 1971); *Howard v. Adams County Board of Supervisors*, 453 F.2d 455 (5th Cir. 1972) (Order of July 29, 1971), cert. denied, 407 U.S. 925 (1972); *Hall v. Issaquena County Board of Supervisors*, 453 F.2d 404 (5th Cir. 1971) (Order of July 29, 1971); *Taylor v. Monroe County Board of Supervisors*, 421 F.2d 1038, 1042 (5th Cir. 1970); *Hamer v. Campbell*, 358 F.2d 214 (5th Cir. 1966), cert. denied, 385 U.S. 851 (1966).

District 3 (Desoto and Marshall, three representatives)⁴ when majority black Marshall (62.0% black) was combined with more populous majority white Desoto (64.7% white) to create a districtwide white majority (54.0% white) in which black voting strength in majority black Marshall was submerged.⁵ The 1975 temporary plan⁶ perpetuated this dilution by (1) combining Desoto and Marshall in District 3B for the election of a floater representative and (2) enveloping the black population concentration in Marshall large enough for independent representation in a countywide district, District 3A, containing 24,027 persons, 5,856 persons in excess of the norm (18,171), leaving Marshall County voters unconstitutionally underrepresented by a total variance of +32.23%.

The 1976 permanent plan provides black voters in new District 3 with a black majority district which is 67.2% black (1970 Census),⁷ and in which blacks constitute 57.5% of the total 1975 estimated voting age population.⁸

⁴ Description of the House districts defined by the 1971 court-ordered reapportionment plan are set out in the District Court's decision, *Connor v. Johnson*, 330 F. Supp. 506, 512-16.

⁵ A map showing dilution of black voting strength in multi-county, multi-member districts may be found in J.S., *Connor v. Waller*, *supra*, p. 11, and the population statistics for such districts are set out at *id.*, App. D, pp. 1d-2d.

⁶ Descriptions of the House districts defined by the 1975 court-ordered reapportionment plan are set out in the District Court's 1975 decision, *Pet., Connor v. Coleman*, *supra*, App. F, pp. 48a-52a.

⁷ For beats and precincts for which 1970 Census data was not available, the Census population was estimated based on 1970 Census enumeration district population statistics.

⁸ 1975 voting age population statistics are based on the Mississippi State University projections of Ellen S. Bryant and Sanabel El-Attar, *Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975* (1973) (Ex. P-13).

The District Court considered calling a special election in new District 3, but rejected plaintiffs' motion on the basis of purported data not in the record in this case (Opinion of Nov. 12, 1976, Appendix B attached, p. 11):

"Marshall County has a population of 14,891 black people and 9,101 whites. At the general election of November 4, 1975, a white candidate for representative in District 3A received 5,573 votes. His black opponent received 3,317, carrying ten of the fifty precincts. It would appear that the black people of Marshall County have spoken and we know of no constitutional or equitable principle which would require us to undo the action they have taken."

There is nothing in the record which reflects these election statistics, and the Court has deprived plaintiffs of the opportunity to present evidence to rebut the conclusion drawn. These comments do not negate the fact that District 3A in the 1972 temporary plan had 5,856 persons in excess of the norm, and was malapportioned by a variance of +32.23%. Further, new District 3 is made up of only four supervisors' districts (Districts 1, 2, 3, and 4), whereas old District 3A was a countywide district. Black candidates in Marshall County have been elected county supervisor in District 4, and to the county board of education in Districts 2, 3, and 4. The fact that one black candidate failed to carry the entire county in the 1975 election does not negate the possibility that a black candidate might carry new and reconstituted District 3 which consists of only four supervisors districts, in three of which black candidates have been successful.

District 10 (Panola County, Beats 1, 2, and 5).

Old District 9 in the 1975 temporary plan combined Panola and Yalobusha Counties (two representatives) (*Pet., Connor v. Coleman*, *supra*, App. F, p. 48a). Black

voting strength in majority black Panola County (51.36% black) was diluted by combining it with majority white Yalobusha County (59.35% white) in a multi-member district which had a white districtwide majority of 52.0% and in which blacks constituted only 38.9% of the districtwide 1975 voting age population (Ex. P-13).

The 1976 permanent plan provides black voters in Panola County with a black majority district which is 53.8% black in total population.

Further, two incumbent representatives presently reside in new District 10 (see Affidavit of Frank R. Parker, attached as Appendix H). A special election in this district to cure the dilution of black voting strength in the 1975 temporary plan would thus obviate the necessity of holding special elections in other districts in which dilution is not claimed (see *District 81, infra.*)

District 8 (Coahoma County: Precincts of Coahoma, Lula, Lyon, and Jonestown; Tunica County: Beats 1, 2, 3, and 4, and Armory Precinct)

District 16 (Coahoma County: Beats 4 and 5 and Mattson Precinct)

District 17 (Quitman County; Tunica County: Two Mile Lake Precinct)

In the 1975 temporary plan, Coahoma, Quitman, and Tunica Counties made up a floterial district in which two representatives were elected countywide from Coahoma, two from Quitman and Tunica, and one districtwide from all three counties (Pet., *Connor v. Coleman, supra*, App. F, p. 48a). Although all three counties are majority black in population, no black countywide candidates have been elected in Coahoma or Quitman Counties,* and the

* In the 1975 elections, a black candidate was elected Circuit Clerk in Tunica County when, as rarely happens, the white vote

uncontradicted evidence in this case shows that countywide black voting strength, measured in terms of black registration and turnout, is less than 50 percent of the total. Testimony of Rims Barber, Associate Director of Delta Ministry, Hearing Transcript, May 7, 1975, pp. 219-47, Exs. P-30, P-31.

Thus, in the 1975 temporary plan, black voting strength was minimized and cancelled out by countywide and districtwide voting. In the 1976 permanent plan, four single-member districts are carved out of this three-county area which remedy the dilution present in the 1975 plan and give black voters, for the first time, opportunities to elect legislators of their choice in three of the districts. New District 8 is 73.50% black, new District 16 is 74.52% black, and new District 17 is 58.7% black. The fourth district, new District 15, is white majority, and no special elections are requested in that district. Opportunities for black representation are enhanced by the fact that the districts are now single-member districts and are smaller in area, thus making campaigning less expensive for low income candidates and enhancing the opportunities for voters to make more intelligent and informed choices among the candidates.

District 22 (Bolivar County: Beat 1 and Pace, Longshot, Shaw, Skene, and Stringtown Precincts; Sunflower County: Boyer-Linn Precinct).

District 24 (Bolivar County: Beat 3 and North Cleveland and Merigold Precincts).

In the 1975 temporary plan, three representatives were elected countywide from Bolivar County (old District 14) (Pet., *Connor v. Coleman, supra*, App. F, p. 49a). Bolivar County is one of the largest counties in the state with

was split in the general election among several white candidates. Black candidates have been successful in gaining election to county offices elected by supervisors' districts (beats) in Coahoma County, but not countywide.

a land area of 923 sq. mi.¹⁰ No black candidates have been successful in gaining election to countywide office, although black candidates have carried district offices elected by supervisors' districts (beats). In voting strength, blacks countywide have only a slim 51.4% of the 1975 voting age population, but the uncontradicted evidence in this case indicates that because of disproportionately lower voter registration and turnout caused by socioeconomic factors and the history of discrimination in voting, black countywide voting strength is less than 50%. Testimony of Rims Barber, Associate Director of Delta-Ministry, Hearing Transcript, May 7, 1975, pp. 219-47, Exs. P-30, P-31.

In the 1976 permanent plan, three new single-member districts are carved out of Bolivar County. Two of these new districts—Districts 22 and 24—have substantial black population majorities of 69.0% and 70.9% and also are majority black in estimated 1975 voting age population majorities of 59.6% and 54.8%.

District 25 (Sunflower County, Beats 1 and 3 and Moorehead Precinct).

District 26 (Sunflower County, Beat 5, Sunflower and Indianola Precincts in Beat 2, Dockery, Doddsville, and Ruleville Precincts in Beat 4).

In 1975 temporary plan in old District 13 two representatives were elected countywide from Sunflower County (Pet., *Connor v. Coleman, supra*, App. F, p. 49a). Although blacks had a slight 53.0% edge in the 1975 voting age population (Ex. P-13), the fact of countywide voting in Sunflower County, a county in which no black candidate has gained election to any countywide office, and uncontradicted voting strength statistics showing that the optimum black vote was less

¹⁰ Secretary of State Heber Ladner, *Mississippi Official and Statistical Register, 1972-1976*, p. 157.

than 50% (Barber testimony, May 7, 1975 Tr. 219-247; Exs. P-30, P-31), shows that countywide voting in this multi-member district diluted black voting strength.

Under the 1976 permanent plan, this dilution is offset by the elimination of countywide voting and the creation of single-member districts, in one of which (District 25), blacks constitute 66.9% of the total population (1970 Census) and 57.6% of the 1975 voting age population, and in the other of which (District 26) blacks constitute a 58.5% majority of the total population.

District 27 (Tallahatchie County: Beats 1, 2, 4, and 5 and Paynes Precinct).

Old District 12 in the 1975 temporary plan consisted of all of Tallahatchie County (one representative) (Pet., *Connor v. Coleman, supra*, App. F, p. 49a). Uncontradicted projections of the voting age population by race show that countywide black and white voting age population are approximately 50-50 (Ex. P-13). Given that voting was countywide and that black voter registration is disproportionately lower than white registration (Ex. P-7; Ex. P-10), blacks were deprived of the opportunity to elect candidates of their choice in countywide voting.

Under the 1976 permanent plan, this dilution caused by countywide voting is offset by subdividing Tallahatchie County into a single-member district in which blacks are given an opportunity to elect candidates of their choice in new District 27 in which blacks constitute 62.4% of the total population (1970 Census) and an estimated 52.6% of the 1975 voting age population (Ex. P-13).

District 32 (Issaquena County; Washington County: Beat 1 and Avon Precinct).

District 33 (Washington County: Ward Center, Community Center, Arcola, and Hollandale Precincts).

District 34 (Washington County: Beat 3 and New County Garage Precinct).

In the temporary 1975 county-ordered plan, four representatives were elected districtwide in old District 15 from Issaquena and Washington Counties (Pet., *Connor v. Coleman*, *supra*, App. F, p. 49a). The uncontradicted voting age statistics show that whites constituted a 50.6% majority of the 1975 voting age population of this district (Ex. P-13), thus diluting black voting strength of the majority black population of Issaquena County and of the 38,360 blacks (1970 Census) living in Washington County.

Under the 1976 permanent plan, four single-member districts are carved out of this two-county area, three of them districts in which blacks, for the first time, have a reasonable chance of electing legislators of their choice. District 32 is 57.9% black in population (1970 Census data), District 33 is 55.7% black in population (1970 Census data), and District 34 is 56.0% black population (1970 Census data). Further, all three of these districts, based on 1975 voting age population projections, have black voting age population majorities.

District 37 (Leflore County; Beats 4 and 5).

District 38 (Carroll County; Leflore County: Northeast Greenwood and East Greenwood Precincts; Attala County: Beat 3 less Possumneck Precinct)

In the 1975 temporary plan, three representatives were elected districtwide from old District 17, a multi-county, multi-member district constituting of Carroll and Leflore Counties (Pet., *Connor v. Coleman*, *supra*, App. F, p. 49a). The uncontradicted evidence indicates that whites held a districtwide 52.7% majority of the projected 1975 voting age population of this district (Ex. P-13). In the Leflore County redistricting case, the District

Court found that blacks in Leflore County had been denied equal access to the political process, *Moore v. Leflore County Bd. of Election Comm'rs*, 361 F. Supp. 603, 605-06 (N.D. Miss. 1972), *aff'd*, 502 F.2d 621 (5th Cir. 1974), and rejected a proposal for at-large elections, holding that at-large, countywide elections impermissibly dilute and cancel out black voting strength:

"Regardless of abstract considerations, however, the record in Leflore County fairly requires the conclusion that blacks have been discouraged in political activity or from offering for the office of county supervisor when elections are conducted on an at-large basis. * * * To order at-large elections * * * would diffuse black political strength in support of black candidates running for such offices; and this is impermissible because of the admittedly low participation by blacks in past electoral processes." 361 F. Supp. at 613-14.

Although Judge Coleman was a member of the three-judge panel originally convened in this case, 351 F. Supp. 848 (N.D. Miss. 1971) (three-judge court), this decision, affirmed on appeal by the Fifth Circuit, was ignored by the District Court here in refusing to order special elections.

Under the 1976 permanent plan, three single-member districts are carved out of old District 17, two of which are majority black. In new District 37, which includes Beats 4 and 5 of Leflore County, blacks constitute 69.1% of the total population (1970 Census), and an estimated 61.2% of the 1975 projected voting age population. In new District 38, which includes Carroll and part of Leflore, blacks constitute 51.3% of the total population.

District 52 (Noxubee County; Lowndes County: Crawford and Artesia Precincts).

In the 1975 temporary court-ordered plan, old District 23 was a floterial district which elected four representa-

tives; two representatives were elected from Lowndes County (District 23, two representatives were elected from a multi-county subdistrict which included Oktibbeha and Noxubee Counties (District 23A), and one representative was elected districtwide from Lowndes, Noxubee, and Oktibbeha Counties (District 23B). Pet., *Connor v. Coleman, supra*, App. F, p. 49a. Lowndes and Oktibbeha are majority white counties which are 67.07% and 64.58% white, respectively (1970 Census). Noxubee is a smaller majority black county (65.77% black). The 1975 temporary plan cancelled out black voting strength in Noxubee by combining Noxubee with Oktibbeha in District 23A, which had a white population majority of 54.40% and a white 1975 projected voting age population majority of 66.6% (Ex. P-13), and with both Oktibbeha and Lowndes in District 23B, which had a white population majority of 61.2% and a white 1975 projected voting age population majority of 71.0% (Ex. P-13).

New District 52 in the 1976 permanent plan offsets this dilution by creating a new single-member district consisting of Noxubee County and two precincts in Lowndes County in which blacks constitute 68.0% of the total population and an estimated 59.4% of the projected 1975 voting age population. For the first time, blacks who constitute the majority population of Noxubee County have the opportunity to elect legislators of their choice.

The District Court itself recognized that the old floterial arrangement cancelled out black voting strength in Noxubee County, Appendix B attached, pp. 8-9, but refused to order special elections in District 52 for the reason that: "A special election in new District 52 would necessitate special elections in new Districts 43, 44, 45, and 46, of which Noxubee County is not a part" (Appendix B attached, p. 9). There is nothing in the record

to show, and the District Court fails to state why, a special election would be required in four other districts. We assume that the District Court is referring to the fact that no incumbent representative lives in new District 52, and thus special elections would be required in other districts to avoid increasing the size of the Mississippi House of Representatives. However, since there are two representatives living in new District 44 which formerly was in old Districts 23A and 23B (see Affidavit of Frank R. Parker attached as Appendix H), a special election could be called in new Districts 44 and 52, thus requiring only one additional special election rather than four to retain a 122-member House.

District 47 (Sharkey County; Humphreys County: Beat 5; Yazoo County: Carter, Lake City, Zion, Eden, Free Run, East Midway, West Midway, Harttown, Enola, Fairview, and Holly Bluff Precincts).

District 56 (Yazoo County: Benton, Center Ridge, Robinette, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, and East Lintonia Precincts).

In the 1975 temporary plan, two representatives were elected districtwide from old District 29 which included Sharkey and Yazoo Counties. Although both counties were majority black (1970) in total population, the uncontradicted evidence in this case indicates that whites held a districtwide majority of 52.9% of the total projected 1975 voting age population in this district (Ex. P-13), thus depriving black voters of the opportunity to elect legislators of their choice.

This dilution is offset under the 1976 plan in which two black majority districts are carved out of old District 29. New District 47 has a black population majority of 64.8% and an estimated 1975 black voting age

population majority of 55.5%. New District 56, included entirely within Yazoo County, has a slight black population majority of 50.9%.

District 79 (Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and East Bonita Precinct)

In old District 24 of the 1975 temporary plan four representatives were elected districtwide from Lauderdale and Kemper Counties (Pet., *Connor v. Coleman*, supra, App. F, p. 49a). Under this arrangement, the voting strength of the 20,630 blacks residing in Lauderdale (1970 Census), more than enough to create an 18,171 single-member district, was diluted by districtwide multi-county voting in a district in which whites were a majority of the total population (65.5%) (1970 Census) and a greater majority of the projected 1975 voting age population (72.0%) (Ex. P-13).

This dilution is diminished in new District 79, in which blacks constitute 56.1% of the total population of the new district.

The District Court itself ordered a special election in this new district (Appendix C attached, p. 10), but deferred setting any date for the special election until the time for appeal was exhausted or until an appeal had been decided on the merits.

District 81 (Claiborne and Jefferson Counties).

In the 1975 temporary plan, Claiborne County—which is 74.58% black (1970 Census) and which has numerous black elected officials both countywide and by district—was combined in old District 30 with more populous white Warren County (58.85% white) for the election of three representatives in a white majority legislative district which was 52.7% white in population (1970 Census) and 58.5% white in projected 1975 voting age

population (Ex. P-13). Pet., *Connor v. Coleman*, supra, App. F, p. 50a.

Under the 1976 permanent plan, this dilution is remedied by combining Claiborne County with majority black Jefferson County resulting in new District 81 which has a black population majority of 74.9% and a black projected 1975 voting age population majority of 69.9%.

The District Court itself noted these population statistics showing dilution of black voting strength in old District 30 (Appendix B attached, pp. 10-11), but refused to order special elections on the grounds (1) that a special election in new District 81 would necessitate special elections in new Districts 53, 54, and 55 of Warren County (apparently for the unproved reason that no incumbent representative resides in new District 81), and (2) that the Warren County redistricting currently is on appeal to this Court, *United States v. Board of Supervisors of Warren County, Mississippi*, No. 76-489, in a proceeding which “necessarily entails the reconstitution of voting precincts” (Appendix B attached, p. 11). These reasons are totally insufficient for denying black voters in Claiborne and Jefferson the opportunity, which has been denied them by court-ordered plans since 1965, of electing legislators of their choice. New District 10, in which we request this Court to order a special election to remedy the dilution present in the 1975 temporary plan, currently has two representatives residing in that district (see Affidavit of Frank R. Parker attached as Appendix H). Thus, if a District 10 special election reduces the number of representatives by one, a special election can be ordered in new District 81 which has no incumbent representative without requiring any special election in Warren County and without increasing the size of the House.

District 89 (Adams County: Beats 4 and 5, and Somerset Precinct).

In the 1975 temporary plan, Adams County (old District 33) elected two representatives countywide (Pet., *Connor v. Coleman, supra*, App. F, P. 51a). At-large, countywide voting diluted the voting strength of the 17,865 blacks living in Adams County, a population concentration very close to the norm of 18,171, because Adams County is majority white in population (51.93% white, 1970 Census) and also majority white in projected 1975 voting age population (56.4% white VAP) (Ex. P-13). In the Adams County redistricting case, *Howard v. Adams County Board of Supervisors*, Civil No. 1352 (N), S.D. Miss., the District Court in an unreported opinion considered but rejected as inequitable the Board's proposal for at-large elections for county supervisors (Opinion of July 20, 1971, pp. 41-42).

Two new single-member districts are established in Adams County in the 1976 permanent plan. The dilution in the prior plan is offset in new District 89 in which blacks have a population majority of 53.0%.

No incumbent representative currently resides in new District 89 (see Affidavit of Frank R. Parker, attached as Appendix H). In order to maintain a 122-member House, a special election also would be required in District 88, formerly within old District 33, in which two incumbent representatives reside.

*District 97 (Wilkinson County; Amite County:
Beats 1, 2, and 3)*

In the 1975 plan, Wilkinson County—which has a black population majority of 67.56% (1970 Census) and a black 1975 voting age population majority of 62% (Ex. P-13)—was placed together with Amite County and Franklin County for the election of two representatives districtwide in old District 34, which had a white districtwide 1975 projected voting age population majority of 54.2% (Ex. P-13) (see Pet., *Connor v. Coleman, supra*, App. F, p. 51a). Under this arrangement, the

black majority of Wilkinson was denied the opportunity to elect representatives of their choice.

This dilution is diminished in the 1976 permanent plan in new single-member District 97, which has a black population majority of 60.6% (1970 Census data) and a black 1975 voting age population majority of 53.3%.

Noting these statistics, the District Court ordered a special election in new District 97 (Appendix B attached, p. 12), but deferred setting a date for the special election until the time for taking an appeal had run or until an appeal had been decided on the merits.

REQUESTED SPECIAL HOUSE ELECTIONS

New Single- Member District	% Black (1970 Census)	1975 Black VAP Percent ¹	Old District	1975 Voting % White	Age Pop. % Black
3	67.2%	57.5%	3 ²	69.3%	30.7%
10	53.8%	—	9	61.1%	38.9%
8	73.5%	64.5%	11	43.4%	56.6% ³
16	74.5%	67.3%	11A	46.4%	53.6% ³
17	58.7%	—	11B	44.5%	55.5% ³
22	69.0%	59.6%	14	48.6%	51.4% ³
24	70.9%	54.5%			
25	66.9%	57.6%	13	47.0%	53.0% ³
26	58.5%	—			
27	62.4%	52.6%	12	50.0%	50.0%
32	57.9%	52.1%	15	50.6%	49.4%
33	55.7%	50.6%			
34	56.0%	50.9%			
37	69.1%	61.2%	17	52.7%	47.3%
38	51.3%	—			
52	68.0%	59.4%	23	74.6%	25.4%
			23A	66.6%	43.4%
			23B	71.0%	29.0%
47	64.8%	55.3%	29	52.9%	47.1%
56	50.9%	—			
79	56.1%	—	24	72.0%	38.0%
81	74.9%	69.9%	30	58.5%	41.5%
89	53.0%	—	33	56.4%	43.6%
97	60.6%	53.3%	34	54.2%	45.8%

¹ Estimated black 1975 voting age population for new districts based on 1975 projections not shown where less than 50%.

² Figures given for old District 3 are for district as structured in 1971 legislative elections and for District 3B under temporary 1975 plan.

³ According to the uncontradicted testimony in this case, the "optimum black vote" in each of these districts, measured in terms of voter registration and turnout, was less than 50% (May 7, 1975 Hearing Transcript, pp. 219-247; Exs. P-30, P-31).

11. In 1971, on instructions from this Court to devise single-member legislative districts for Hinds County, 402 U.S. 690, 692 (1971), the District Court found as an "irrefragable fact" that there were "insurmountable difficulties" which prevented the division of Hinds County into single-member districts (330 F. Supp. 521, 523). What was impossible to accomplish in 1971 was accomplished in 1975 between June 10 and July 11. Hinds County was divided into single-member districts for House and Senate (Order of July 11, 1975, Pet., *Connor v. Coleman*, supra, App. F), and in the 1975 elections three black representatives were elected from the three black majority House districts, the first from Hinds County since Reconstruction. The District Court's 1971 finding, which was erroneous prevented the election of black legislators and prevented the black voters of Hinds County from electing legislators of their choice for four years.

Now, the Final Judgment of the District Court, by denying any special election relief for all but two of the new black majority single-member districts created in the permanent plan, denies black voters who resided in discriminatory at-large and multi-member districts in the 1971 and 1975 elections the opportunity to elect legislators of their choice for another four years, until 1979. Since the 1977 regular session of the Mississippi Legislature is scheduled to convene January 4, 1977, deferring special elections in the two House districts selected for those elections until this appeal is decided on the merits deprives black voters in those districts of any effective relief for the 1977 session of the legislature, and violates the assurances of the District Court itself that any special elections ordered would be held "in time for the person elected to take his seat when the Legislature is convened in regular session in January, 1977" (Appendix D attached, p. 33).

Unless the requested special elections are ordered by this Court prior to the convening of the 1977 session of the Legislature, the people of Mississippi will continue to be denied a properly constituted legislature. As this Court said in May: "Ten years of litigation have not yet resulted in a constitutionally apportioned Mississippi Legislature." *Connor v. Coleman, supra* (slip op., p. 1). The voters of Mississippi have suffered for ten years under court-ordered legislative reapportionment plans which failed to comply with this Court's directives in *Connor v. Williams, supra*, and *Chapman v. Meier, supra*, and which, in the face of an extensive past history of disenfranchisement through discrimination in voter registration and the poll tax, invidiously excluded Mississippi blacks from effective participation in legislative elections through multi-county, multi-member districts, at-large, countywide voting, and malapportionment. Now that this dilution of black voting strength has been alleviated by a permanent plan which provides single-member districts statewide, and which for the first time since the Voting Rights Act of 1965 provides Mississippi blacks with an opportunity to effectively participate in legislative elections in 22 new majority black single-member House districts, special elections in those districts should be ordered without further delay. More is at stake here than merely "the danger of denying justice by delay." *Kelly v. Metropolitan County Board of Education of Nashville*, 436 F.2d 856, 862 (6th Cir. 1970); see also, *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969). Appellants' constitutional and statutory rights—"warrants for the here and now," *Watson v. City of Memphis*, 373 U.S. 526, 533 (1963)—already have been denied in the face of a decade of efforts to secure those rights—not in the streets, but in the courts. The injustice and inequities of the 1971 and 1975 plans will be perpetuated unless this Court acts now to order the special elections requested.

12. The interim relief requested by appellants is reasonable and in the public interest. No special elections for the Mississippi Senate are requested; plaintiffs continue to contest the District Court's Senate plan, and if relief is not granted in a motion to alter or amend the judgement, plaintiffs plan an appeal from the Senate plan.¹¹ The House districts in which special elections are requested are only those in which black voters previously have been denied effective participation in the electoral processes. Because the new House districts are based on current supervisors' districts and voting precincts, no realignment of precinct boundaries is necessary before the new plan can be implemented. No special elections are requested in new single-member House districts established for the 1975 elections, except for the extremely malapportioned Marshall County district. No incumbent legislators can claim harm from special elections now since they were put on notice by the District Court itself that the 1975 temporary plan was for the 1975 elections only, and that special elections in 1976 would follow.

13. Appellants move the Court to issue an order requiring the appellees to direct and order special elections in the above-named new House districts not less than 30 days from the date of this Court's order. Mississippi law requires "at least ten days' notice" of special legislative elections, Miss. Code Ann. § 23-5-201 (1972). But because these are new districts, thirty days notice of special elections should be given to allow candidates and voters to become acquainted with the new boundaries of

¹¹ Plaintiffs plan to file a motion to alter or amend the Final Judgment contesting the Senate plan and certain districts in the House plan. If that motion is denied, plaintiffs will seek review of the permanent plan in this Court on the merits. Plaintiffs do not contest the House plan in its entirety, but only certain districts which are not included in the list of House districts in which we request special elections.

their districts, and to give candidates time within which to qualify and campaign for legislative office. Mississippi law also requires a majority vote to win a special election, and if no candidate receives a majority, a run-off is required two weeks later. Miss. Code Ann. § 23-5-203 (1972). Hence, under this timetable, 44 days would be needed to complete the special election process. Accordingly, we request the Court to postpone the convening of the 1977 regular session of the Mississippi Legislature to allow adequate time for the special elections and run-offs, if necessary, to be held. This postponement should not delay the convening of the Legislature for more than 30 days. The 1977 session of the Legislature is scheduled to last three months.

CONCLUSION

For the foregoing reasons, and on the basis of the authorities cited, appellants pray that this Court issue an order directing the appellees to order and direct special legislative elections in House districts 3, 8, 10, 16, 17, 22, 24, 25, 26, 27, 32, 33, 34, 37, 38, 47, 52, 56, 79, 81, and 97 as established by the Final Judgment of the District Court entered November 18, 1976. In order to avoid increasing the size of the Mississippi House of Representatives, we also request special elections in new House districts 44 and 88, but these are not necessary to cure the discrimination present in the 1975 temporary plan. This Court should direct that these special elections should be held "at the earliest practicable date," *Connor v. Coleman, supra* (slip op. at 5), but in any event not less than 30 days after this Court's order. This Court should also direct the appellees temporarily to postpone convening the 1977 regular session of the Mississippi Legislature until these special elections are held, with any necessary runoffs, and the winning candidates

are certified. Alternatively, appellants request this Court to expedite this appeal on the merits.

Respectfully submitted,

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APPENDICES

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APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830 (A)

[Filed Sep. 16, 1976, Southern District of Mississippi,
Harvey G. Henderson, Clerk, By _____, Deputy]

PEGGY J. CONNOR, *et al.*,
Plaintiffs,

—vs—

CLIFF FINCH, *et al.*,
and Defendants,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor.

MOTION FOR SPECIAL ELECTIONS
(HOUSE PLAN)

Plaintiffs, by their attorneys, move the Court pursuant to its Judgment of September 8, 1976, for an order shortening the terms of office of incumbents and ordering special elections to coincide with the November 2, 1976 Presidential election, or in any event prior to January 1, 1977 in the following 42¹ new districts:

¹ Seven of the black majority districts are also districts in which incumbents are pitted against each other or districts without any representation under the new plan.

(1) Districts in which black voting strength was diluted, cancelled out, and minimized under the 1975 temporary court-ordered plan, but which under the new plan have black population majorities (1970 Census) and/or black voting age population majorities (1975 estimates): New Districts 3, 8, 10, 15, 16, 17, 22, 24, 25, 26, 27, 32, 33, 34, 37, 38, 47, 52, 56, 79, 81, 89, and 97.

(2) Districts in which incumbent House members are thrown together in the same district: New Districts 6, 8, 10, 20, 44, 53, 56, 74, 83, 88, 93, 99, and 113.

(3) Districts which are without any representation under the new plan because the new districts place 13 incumbent representatives together in the same district: New Districts 4, 11, 16, 30, 47, 52, 54, 75, 81, 89, 95, 98, and 115.

A. Dilution and Minimization of Black Voting Strength.

District 3.

Black voting strength in Marshall County has been diluted since the 1971 court-ordered plan in which majority black Marshall County (62.0% black) was combined with larger, majority white Desoto (35,885 persons, 64.7% white) in a white majority multi-member district (54.0% white, 45.9% black) which diluted black voting strength in Marshall. The 1975 temporary plan perpetuated this dilution by (1) combining Desoto and Marshall in District 3B for the election of a floater representative and (2) enveloping the black population concentration in Marshall large enough for independent representation in a countywide district, District 3A, containing 24,027 persons, 5,856 persons in excess of the norm, leaving Marshall County voters unconstitutionally underrepresented by a total variance of +32.23%.

The 1976 permanent plan provides black voters in Marshall County with a black majority district which is 67.2% black (1970 Census),² and in which blacks constitute 57.5% of the total 1975 estimated voting age population (see Exhibit 1, attached).³

District 10.

In the 1975 temporary plan, black voting strength in majority black Panola County (51.36% black) was diluted by combining it with majority white Yalobusha County (59.35% white) in a multi-member district which had a white districtwide majority of 52.0% and in which blacks constituted only 38.9% of the districtwide 1975 voting age population (Ex. P-13).

The 1976 permanent plan provides black voters in Panola County with a black majority district which is 53.8% black in total population (Exhibit 1, attached).

Districts 8, 15, 16, and 17.

Black voting strength in the 1975 temporary plan in old Districts 11 (Coahoma, two representatives, 11A (Quitman and Tunica), and 11B (Coahoma, Quitman, and Tunica) was diluted by countywide and multi-county districtwide voting in counties in which no black candidates had been successful in gaining election to countywide office and in which, measuring the realities of black voting strength in terms of registration and turnout, the optimum black vote is less than 50% even though blacks constitute a majority of the voting age population (tes-

² For beats and precincts for which 1970 Census data was not available, the Census population was estimated based on 1970 Census enumeration district population statistics.

³ 1975 voting age population statistics are based on the Mississippi State University projections of Ellen S. Bryant and Sanabel El-Attar, *Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975* (1973) (Ex. P-13).

timony of Rims Barber, Associated Director of Delta Ministry, May 7, 1975 Tr. 219-247, Exs. P-30, P-31).

In the 1976 permanent plan, dilution of black voting strength is substantially diminished in two districts, Districts 8 and 16, in which blacks constitute, respectively, 74.0% and 69.0% of the total population, and 65.3% and 61.8% of the 1975 voting age population (Ex. P-13). In two other districts, Districts 15 and 17, blacks constitute majorities of 54.7% and 58.7% of the total population. The creation of single-member districts, thus eliminating the necessity for candidates to run in countywide and multi-county districts, plus these increased black population statistics in single-member districts, gives black voters, for the first time, a realistic opportunity to elect candidates of their choice.

District 27.

In old District 12 in the 1975 temporary plan, 1975 black voting age population was approximately 50-50 with white voting age population in Tallahatchie County (Ex. P-13). Given that voting was countywide and that black voter registration is disproportionately lower than white registration (Ex. P-7; Ex. P-10), blacks were deprived of the opportunity to elect candidates of their choice.

Under the 1976 permanent plan, this dilution caused by countywide voting is offset by subdividing Tallahatchie County into a single-member district in which blacks are given an equal opportunity to elect candidates of their choice in a district in which blacks constitute 62.4% of the total population (1970 Census) and 52.6% of the 1975 voting age population (Ex. P-13) (see Exhibit 1, attached).

Districts 25 and 26.

In the 1975 temporary plan, although blacks had a slight 53.0% edge in the 1975 voting age population

(Ex. P-13), the fact of countywide voting in Sunflower County, a county in which no black candidate has gained election to any countywide office, and uncontradicted voting strength statistics showing that the optimum black vote was less than 50% (Barber testimony, May 7, 1975 Tr. 219-247; Exs. P-30, P-31), shows that countywide voting in this multi-member district diluted black voting strength.

Under the 1976 permanent plan, this dilution is offset by the elimination of countywide voting and the creation of single-member districts, in one of which (District 25), blacks constitute 66.9% of the total population (1970 Census) and 57.6% of the 1975 voting age population, and in the other of which (District 26) blacks constitute a 58.5% majority of the total population (see Exhibit 1, attached).

Districts 22 and 24.

In the 1975 temporary plan, black voting strength was diluted in old District 14, Bolivar County, by (1) at-large, countywide voting in a county in which no black candidate has been elected to countywide office, and (2) in a geographically large (923 sq. mi) district electing 3 representatives, and (3) in which although blacks had a slim 51.4% 1975 voting age population majority, because of lower registration and turnout the optimum black vote was less than 50% (Barber testimony, May 7, 1975 Tr. 219-247, Exs. P-30, P-31).

This dilution of black voting strength is diminished in single-member Districts 22 and 24, in which blacks constitute both a majority of the total population and a substantial majority of the 1975 voting age population (59.6% and 54.5% respectively) (see Exhibit 1, attached).

Districts 32, 33, and 34.

1975 temporary plan District 15 (Washington and Issaquena Counties) was a geographically large (692 sq. mi) multi-county, multi-member district electing 4 representatives, in which black voting strength was diluted and in which blacks constituted a minority of only 49.5% of the 1975 voting age population (Ex. P-13). The voting strength of blacks living in majority black Issaquena County, and the voting strength of 38,360 blacks living in Washington County were diluted by encompassing them in a white voting age population majority district (see Exhibit 1, attached).

Under the 1976 permanent plan, three single-member districts carved out of this large multi-member district, Districts 32, 33, and 34, are both majority black in population and in 1975 voting age population (see Exhibit 1), thus alleviating the manifest dilution effected by the prior multi-member district.

Districts 37 and 38.

The 1975 temporary plan combined Leflore County and Carroll County in a multi-county, multi-member district electing three representatives in which the substantial potential of black voting strength of Leflore County was diluted by including it in a district in which whites held a 52.7% majority of the total 1975 voting age population (Ex. P-13). At-large countywide and districtwide voting was perpetuated in this district in the 1975 plan even though the U.S. District Court for the Northern District of Mississippi and the U.S. Court of Appeals for the Fifth Circuit had ruled that at-large voting in Leflore County unconstitutionally diluted black voting strength. *Moore v. Leflore County Bd. of Election Commissioners*, 351 F. Supp. 848 (N.D. Miss. 1971) (three-judge court) (striking down at-large elections), 361 F. Supp. 603 (N.D. Miss. 1972), 361 F. Supp. 609 (N.D.

Miss. 1973) (refusing to allow at-large elections), *aff'd*, 502 F.2d 621 (5th Cir. 1974).

This unconstitutional dilution has now been offset in new Districts 37 and 38. In District 37, which includes Beats 4 and 5 of Leflore County, blacks constitute 69.1% of the total population (1970 Census), and 61.2% of the 1975 voting age population. In District 38, which includes Carroll and part of Leflore, blacks constitute 51.3% of the total population.

District 52.

Old Districts 23, 23A, and 23B in the 1975 temporary plan (electing a total of five representatives) diluted black voting strength by combining majority black voting strength by combining majority black Noxubee County (65.8% black) with majority white Oktibbeha County (64.6% white) in District 23A in which whites were 66.6% of the 1975 voting age population districtwide (Ex. P-13) and with both Oktibbeha and majority white Lowndes County (67.1% white) in District 23B, in which whites were 71.0% of the 1975 voting age population districtwide (Ex. P-13).

New District 52 offsets this dilution of Noxubee black voting strength by creating a single-member district in which blacks constitute 68.0% of the total population and an estimated 59.4% of the 1975 voting age population.

District 79.

The 1975 temporary plan in old District 24 diluted black voting strength through countywide and districtwide voting in a multi-member district which elected four representatives from Kemper and Lauderdale Counties. Under this arrangement, the voting strength of the 20,630 blacks residing in Lauderdale, more than enough to create an 18,171 single-member district, was diluted by districtwide multi-county voting in a district in which whites

were a majority of the total population (65.5%) and a greater majority of the 1975 voting age population (72.0%) (Ex. P-13).

This dilution is diminished in new District 79, in which black constitute 56.1% of the total population of the new district.

Districts 47 and 56.

In the 1975 temporary plan, Sharkey and Yazoo Counties were placed together in a multi-member district (old District 29). Although both counties were majority black in total population, the combining of the two in a single multi-county, multi-member district diluted black voting strength by producing a district in which whites constituted a 52.9% majority of the 1975 voting age population (Ex. P-13). This result is achieved because, although both counties are black majority in population, Yazoo County has a white 1975 voting age population majority of 55% (Ex. P-13).

This dilution is offset under the 1976 plan in which two black majority districts are carved out of old District 29. District 47 has a black population majority of 64.8% and an estimated 1975 black voting age population majority of 55.5%. District 56, included entirely within Yazoo County, has a slight black population majority of 50.9%.

District 81.

Of all the multi-member districts created by the 1971 and 1975 temporary plans, the discrimination in old District 30 was among the most egregious. Claiborne County, which is one of the blackest counties in the state (74.58% black, 1970 Census) and which has numerous black countywide elected officials, was combined with 58.85% white majority Warren County with the effect of diluting black voting strength in a white districtwide

population majority of 52.7% and a greater white districtwide 1975 voting age population majority of 58.5%. Further, the voting strength of 18,355 blacks living in Warren County was diluted and cancelled out in the white districtwide population and voting age population majority.

Under the 1976 plan, majority black Claiborne is combined with majority black Jefferson County in new District 81 which has a black population majority of 74.9% and a black 1975 estimated voting age population majority of 69.9%.

District 89.

Although there are 17,865 blacks in Adams County, enough to comprise a majority in a single-member district, black voting strength was cancelled out in the 1975 plan in old District 33 by countywide voting in a multi-member district which had a white population majority of 51.93% (1970 Census) and a greater white 1975 voting age population majority of 56.4% (Ex. P-13). Further, in the Adams County redistricting case, *Howard v. Adams County Board of Supervisors*, Judge Nixon in an unreported District Court decision rejected the Board's proposal for countywide voting for supervisors as inequitable (Civil No. 1352(N), S.D. Miss., Vicksburg Div., Opinion of July 20, 1971).

This dilution is offset in the 1976 single-member plan by giving Adams County blacks a black population majority of 53.0% in new District 89.

District 97.

In the 1975 plan, black voting strength was diluted and cancelled out in old District 34, comprising Amite, Franklin, and Wilkinson Counties, by combining Wilkinson, which had a black voting age population majority of 62% (1975, Ex. P-13), with the two white voting age

population majority counties of Amite (59% white 1975 VAP) and Franklin (67% white 1975 VAP). The district had a total white 1975 voting age population majority of 54.2%, thus depriving black voters of any realistic opportunity to elect legislators of their choice.

Under the 1976 plan, District 97, which includes Wilkinson and three beats of Amite, has a black population majority of 60.6% and a black 1975 voting age population majority of 53.3%.

Constitutional Standards.

The above discussion points out the districts in the 1975 plan in which black voting strength was diluted and which that dilution is diminished or offset to varying degrees by the single-member districts contained in the 1976 plan. For a demonstration of the constitutional standards and their applicability to the old districts of the 1975 plan, we would refer the Court to our previous memos on this subject, including Plaintiffs' Memorandum of Law, filed February 14, 1975, Plaintiffs' Supplemental Post-Trial Memorandum of Law, filed May 10, 1975, Appellants' Jurisdictional Statement, *Connor v. Waller*, 421 U.S. 656 (1975), Plaintiffs' Motion to Alter or Amend Judgment, filed July 21, 1975, and Plaintiffs' Memorandum of Law, filed June 23, 1976.

B. Districts in Which Incumbents Are Placed Together in a Single District and Districts Which Are Not Represented in the New Plan

Plaintiffs also urge the Court to order special elections in those districts in which two incumbents are thrown together in a single new district, and in those districts in which, under the new plan, there are currently no representatives.

The reasons in both cases are simple and obvious. Each district which contains two incumbent representa-

tives under the new plan is currently overrepresented in the Legislature by a deviation of approximately 100 percent. For each approximately 18,171 people in each of these districts, there currently are two representatives, rather than the one required by the Constitution. A list of these districts is attached hereto as Exhibit 2. The voters in these two-member districts, to whom the representatives are responsible and on whom the current representations must rely for reelection, under the new plan now have twice the political power and influence in the Legislature of districts which have only one resident representative under the new plan.

Each district which has no incumbent representative under the new plan, which also are listed in Exhibit 2 attached, currently has no representation and under the new plan no current political power or influence in the Legislature. The voters in these districts which have no resident legislators are totally unrepresented under the new plan. Hence, special elections are required in these new districts as well.

WHEREFORE, plaintiffs pray that their motion be granted.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER

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Attorneys for Plaintiffs

[Certificate of Service Omitted in Printing]

**Exhibit 1. NEW HOUSE DISTRICTS IN WHICH SPECIAL ELECTIONS
SHOULD BE HELD.**

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Old District	Description	No. of Reps.	1975 Voting White %	Age Pop. ¹ Black %	New District	Description	% Black ² (1970 Census)	1975 Black ³ VAP Percent
3, 3A, 3B (Floterial)	DeSoto and Marshall	3	69.3%	30.7%	3	Marshall, Beats 1, 2, 3 and 4	67.2%	57.5%
9	Panola and Yalobusha	2	61.1%	38.9%	10	Panola, Beats 1, 2 and 5	53.8%	44.5%
11A	Coahoma	2	43.4%	56.6%	15	Coahoma precincts	54.7%	46.6%
	Quitman and Tunica	1	46.4%	53.6%	16	Coahoma precincts	69.0%	61.8%
11B (Floterial)	Coahoma, Quitman and Tunica	1	44.5%	55.5%	8	Tunica, Beats 1, 2, 3, and 4, Armory; Coahoma precincts	74.0%	65.3%
					17	Quitman; Tunica, Two Mile Lake	58.7%	49.0%
12	Tallahatchie	1	50.0%	50.0%	27	Tallahatchie, Beats 1, 2, 4 and 5, Paynes	62.4%	52.6%
	Sunflower	2	47.0%	53.0%	25	Sunflower, Beats 1 and 3, Moorhead,	66.9%	57.6%
					26	Sunflower, Beat 5, other precincts	58.5%	48.3%
14	Bolivar	3	48.6%	51.4%	22	Bolivar, Beat 1 and other precincts; Sun- flower, Boyer-Linn	69.0%	59.6%
					24	Bolivar, Beat 3 and N. Cleveland and Merigold	70.9%	54.5%
15	Issaquena and Washington	4	50.6%	49.4%	32	Issaquena; Washington, Beat 1 and Avon	57.9%	52.1%
					33	Washington, Precincts	55.7%	50.6%
					34	Washington, Beat 3 and New County Garage	56.0%	50.9%

¹ E. Bryant and S. El-Attar, *Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975* (Mississippi State University 1973) (Ex. p.13).

² Based on 1970 Census data, estimated for precincts based on census enumeration districts.

³ Estimates based on Ex. P-13, *supra*.

Old District	Description	No. of Reps.	1975 Voting White %	Age Pop. Black %	New District	Description	% Black (1970 Census)	1975 Black VAP Percent
17	Carroll and Leflore	3	52.7%	47.3%	37	Leflore, Beats 4 and 5	69.1%	61.2%
					38	Carroll; Leflore, two precincts, Attala, Beat 3 (less Possumneck)	51.3%	41.4%
23	Lowndes	2	74.6%	25.4%				
23A	Oktibbeha and Noxubee	2	66.6%	43.4%				
23B	Lowndes, Noxubee, and Oktibbeha	1	71.0%	29.0%	52	Noxubee; Lowndes, Crawford and Artesia	68.0%	59.4%
24	Kemper and Lauderdale	4	72.0%	38.0%	79	Lauderdale, Meridian precincts and East Bonita	56.1%	49.6%
29	Sharkey and Yazoo	2	52.9%	47.1%	47	Sharkey; Humphreys, Beat 5; Yazoo prects.	64.8%	55.3%
					56	Yazoo precincts	50.9%	42.5%
30	Claiborne and Warren	3	58.5%	41.5%	81	Claiborne and Jefferson	74.9%	69.9%
33	Adams	2	56.4%	43.6%	89	Adams, Beats 4 and 5, Somerset	53.0%	48.6%
34	Amite, Franklin, and Wilkinson	2	54.2%	45.8%	97	Wilkinson; Amite, Beats 1, 2, and 3	60.6%	53.3%

EXHIBIT 2. HOUSE MEMBERS PLACED IN THE SAME DISTRICT AND DISTRICTS WITHOUT REPRESENTATION.

<u>New District</u>	<u>House Members</u>	<u>District Without Rep.</u>
6	Irby Benjamin (Reinzi) Jimmy Ray McCalla (Corinth)	4
8	Harry Neblett (Jonestown) Malcolm Mabry (Dublin)	16
10	Wes McIngvale (Batesville) Harry Bryan (Batesville)	11
19	Tommy Brooks (Tupelo) Harold Montgomery (Tupelo)	30
44	Horace Harned (Starkville) Glenn Shumake (Columbus)	52
53	George Rogers (Vicksburg) Donald Cross (Vicksburg)	54
56	Tommy Campbell (Yazoo City) John Sharpe Holmes (Yazoo City)	47
74	Lonnie Johnson (Rankin Co.) Jimmie Morrow (Brandon)	75
83	Bobby Anderson (Wesson) Harold Fortenberry (Monticello)	81
88	Walter Brown (Natchez) Tommy O'Beirne (Natchez)	89
93	Tucker Buchanan (Laurel) Vincent Scoper (Laurel)	95
99	Tommy Walmon (McComb) Ashley Atkinson (McComb)	98
113	Glenn Endris Jerry O'Keefe	115

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830 (A)

[Received 7-25-76]

PEGGY J. CONNOR, *et al.*,
Plaintiffs,

v.

CLIFF FINCH, *et al.*,
Defendants,
and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor.

PROPOSAL BY THE UNITED STATES
FOR SPECIAL ELECTIONS

In its Order of September 8, 1976, this Court set forth a permanent apportionment plan for the Mississippi State House of Representatives and directed the parties to this litigation:

"... to file a list of the districts for the election of Representatives in which special elections should be held ... assigning their reasons as to each district individually."

Without necessarily agreeing with all of the districts set forth in the Court's ordered plan, as to which our analysis is continuing and with respect to which we will request leave to file our views concerning the sufficiency of the plan as a permanent plan for the 1979 election,

the United States hereby submits its analysis of the need for special elections under the plan drawn by the Court.

The attached chart sets forth the districts in which we submit special elections are appropriate, indicating the number of the district as set forth in the Court's Order of September 8, 1976, and the corresponding district number under the Temporary Plan ordered July 11, 1975. The criteria set forth below are derived from relevant case authorities and were utilized to determine the districts in which special elections are required. Since our interest arises primarily by virtue of the Voting Rights Act, our criteria are limited to situations involving potential dilution of the black vote or other Fifteenth Amendment considerations. As discussed later in this memorandum the criteria have been modified from those set forth in our memorandum on the Senate plan. As with the Senate plan, we suggest that the Court may wish to consider the need for special elections under Fourteenth Amendment principles for any district in which the constituency—is substantially altered.

Criteria Used:

- (1) The Temporary Plan district was a multi-member district and the district under the Permanent Plan has a black voting age population majority or contains a substantial black population if, in the latter instance, the black minority in the resulting single-member district is appreciably larger than the black percentage in the previously existing multi-member district; or,
- (2) The district pursuant to the Temporary Plan, although a single-member district was altered and the Permanent Plan district has a black voting age population majority where none existed before.

The application of these criteria results in recommended special elections in 29 house districts. The house districts, and the criteria under which each district falls, are incorporated in the attached chart.

In addition, we would like to take this opportunity to bring to the Court's attention an error in the application to the senate plan criteria set forth in our submission to the Court on September 8, 1976. In that proposal we listed new senate districts 40, 41, 42 and 43 as districts in which special elections should be held. However, our continuing analysis shows that since old district 26 was a single-member district, criteria number 1 in our prior proposal would not apply to new senate district 40 and since new district 40 does not have a majority black voting age population criteria number 2 would not apply. Furthermore, new district 40 is, except for two beats of Walthal County, essentially the same as old district 26.

A somewhat similar situation exists with regard to new senate district 43. Except for one beat and a portion of another (2 precincts), Jones County constitutes new senate district 43 whereas one of the old subdistricts (27(a)), electing its own senator, in previously existing floterial district 27 was made up of Jones County in its entirety. Thus, with a minor variation the new district 43 constituency conforms to that of the old Jones County subdistrict which elected a senator.

For these reasons, application of our criteria 1 and 2 of the previous memorandum would not warrant special elections in either district 40 or 43 of the senate plan. Districts 41 and 42 were included under criteria number 3 only because of their interrelationship with districts 40 and 43. Consequently, we request the Court's permission to withdraw our recommendation for special elections in senate districts 40, 41, 42 and 43. (We note in passing that the significant alteration of the constituency in dis-

tricts 41 and 42 may raise the kind of Fourteenth Amendment questions alluded to previously as non-dilution type issues appropriate for the Court's consideration.)

Finally, our analysis has occasioned us to re-evaluate the criteria stated in our memorandum on the senate plan. In doing so, we conclude that criteria number 3 in our previous memorandum is not primarily one dealing with Voting Rights Act—Fifteenth Amendment considerations, geared as it is toward the fallout effects of situations which, in our view, do involve such considerations. Accordingly, we have eliminated criteria number 3 from our proposal relating to the house plan. In addition, we have reassessed the senate plan without regard to criteria number 3. As reflected in this memorandum we have also refined criteria number 1 and, as a result, conclude that new senate districts 1 and 2 may also be eliminated from the list of special election districts.

In conclusion, therefore, we offer the attached list of house of representatives districts in which special elections should be held and request that new senate districts 1, 2, 40, 41, 42 and 43 be eliminated from our previously submitted list of senate districts recommended for special elections. As modified, our recommendation is that special elections should be scheduled in 8 senate districts and 29 house districts in the Court's proposed plan.

Respectfully submitted,

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MICHAEL D. JOHNSON
Attorneys
Department of Justice
Washington, D. C. 20530

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MISSISSIPPI HOUSE DISTRICTS (COURT ORDER
SEPTEMBER 8, 1976) IN WHICH THE UNITED STATES
RECOMMENDS SPECIAL ELECTIONS

PERMANENT PLAN			TEMPORARY PLAN			Blk. ¹ VAP %	Appli- cable Criteria
Dist. #	Blk. Pop. %	Blk. ¹ VAP %	Dist. # ²	Blk. Pop. %			
3	67.7	62.0	3(3)	45.9			1
8	74.2	68.2	11(4)	64.2	57.6		1
10	53.5		9(2)	47.9			1
15	57.4	50.8	11(4)	64.2	57.6		1
16	62.1	55.6	11(4)	64.2	57.6		1
17	58.8	51.6	11(4)	64.2	57.6		1
22	70.0	62.0	13(2)	62.8	54.8		1
			14(3)	61.4	53.3		
24	68.9	60.7	14(3)	61.4	53.3		1
25	64.3	56.8	13(2)	62.8	54.8		1
26	60.9	52.3	13(2)	62.8	54.8		1
32	58.1	52.3	15(4)	54.8	49.4		1
33	56.1	50.6	15(4)	54.8	49.4		1
34	55.5		15(4)	54.8	49.4		1
37	68.6	62.8	17(3)	56.6	50.1		1
38	51.4		17(3)	56.6	50.1		1
			19(1)	40.4			
47	64.8	57.4	16(2)	66.8	59.4		1
			29(2)	56.2	49.6		
48	62.6	55.7	16(2)	66.8	59.4		1
49	69.2	60.1	16(2)	66.8	59.4		1
52	67.9	61.33	23(5)	38.4			1
56	50.7		29(2)	56.2	49.6		1
57	66.5	61.1	28(4)	42.0			1
79	55.4	50.00	24(4)	33.9			1
81	74.9	70.5	30(3)	47.0			1
			32(2)	51.1	50.1		
82	52.8		32(2)	57.1	50.1		1
89	54.6	50.7	33(2)	47.9			1
97	60.65	54.2	34(2)	53.4	46.6		1
103	42.7		39(4)	22.1			1
105	40.1		39(4)	22.1			1
115	45.6		45 to	5.4 to			1
			45E(7)	34.3			

Total special election districts—29

¹ Black VAP not shown where less than 50%

² Size of multimember districts shown in parenthesis.

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APPENDIX H

AFFIDAVIT

FRANK R. PARKER, after first being duly sworn, deposes and says as follows:

1. I am counsel for the plaintiffs in *Connor v. Finch*, Civil No. 3830(A), S.D. Miss. (three-judge Court).

2. Subsequent to the District Court's Opinion of September 8, 1976, I made inquiries in the office of the Speaker of the Mississippi House of Representatives to determine which new House districts established by the District Court's permanent House plan had two or more incumbent representatives residing in them, and which had none. Upon information and belief, the Speaker's staff had made inquiries of incumbent representatives to determine in which voting precinct, supervisors' district, and new House district each incumbent representative resided.

3. The Speaker's staff provided me with the following information:

A. The following new House districts have two incumbent representatives currently residing in them: New House Districts 6, 8, 10, 19, 44, 53, 56, 74, 83, 88, 93, 99 and 113.

B. The following new House districts have no incumbent representatives currently residing in them: New House Districts 4, 11, 16, 30, 47, 52, 54, 75, 81, 89, 95, 98, and 115.

/s/ Frank R. Parker
FRANK R. PARKER

Sworn to and subscribed before me this 18th day of November, 1976.

/s/ Miss Laverne Holly
Notary Public
My Commission expires August 30, 1978.